IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 52/2006

Shri Dinkar Savalaram Parab and anr. ..... Appellants.

Vs.

Shri Joao Francisco Cruz Mendes and ors. ..... Respondents.

Mrs. A. A. Agni and Mr. M.S. Prabhudessai, Advocates for the appellants.

Mr. Joseph Vaz, Advocate for the respondents.

CORAM : P.V. KAKADE, J.

DATE : 11th October, 2006.

P.C.

The unsuccessful plaintiffs have filed this appeal against the Judgment and Order passed by the Additional District Judge, Margao dismissing their appeal and confirming the Judgment and Order passed by the Civil Judge, Jr. Division, Quepem, in Regular Civil Appeal No.60/92 on 30.8.2001, dismissing the plaintiffs' suit.

2. I have heard the learned Counsel for the parties. Perused the

record. The plaintiffs' came with a case that they were residing in the property known as “SHELCHI TEMBI” owned by Shri Maruti Devasthan bearing land registration No. 17521 of Book B-48 and presently surveyed under No.1/6 of Village Kakoda. The plaintiffs alleged that the defendants purchased plot from vendor in title, one Shri Ambrose Dantas lying on the eastern side of the plaintiffs' property by sale deed dated 28.9.1961 and made construction thereon. The plaintiffs' case further is that they have easementary right over the pathway passing through the plot of the defendants bearing Survey No. 4/12 and such right of easement exists for several years. The cause of action arose when the defendants obstructed the peaceful enjoyment of such right of pathway of the plaintiffs and hence, the suit came to be filed. The defendants, inter alia, denied the allegations made by the plaintiffs stating that the plaintiffs had no right of way over their property and they had in fact an access through their property from other side and, as such, sought dismissal of the suit.

3. The trial Court, on the basis of the pleadings and the evidence on record, adjudicated the dispute and came to the conclusion that the plaintiffs failed to prove their easementary right over the land of the defendants. It was also held that the plaintiffs failed to prove that the defendants had obstructed their right of way and as such the suit came to

be dismissed. An appeal was carried to the District Court. The learned Addl. District Judge, Margao after hearing both the parties and on the basis of the available evidence, concurred with the findings recorded by the trial Court and dismissed the appeal. Hence, the present appeal.

4. At the outset, it may be noted that basically the dispute is adjudicated on the factual aspect of the evidence. The learned Counsel for the appellants submitted that substantial question of law was involved in this appeal to the effect whether the appellate Court after recording a finding that the enjoyment of the access was not with the consent of the owners i.e. it was not permissive, could have held that the enjoyment was not as of right and whether the said finding is, interse, contradictory and, therefore, amounted to perversity.

On perusal of the reasoning adopted and the findings recorded by the lower appellate Court, I find that the evidence available is appreciated in proper perspective and there is absolutely no element of perversity. It is to be noted that the lower Court conducted site inspection of the suit property and has also referred to the sketch drawn of the property. In the site inspection notes, it is clearly observed that there are two accesses available for the plaintiffs for approach over the suit property. No doubt that the local inspection may not be sufficient to show

if any right is vested in the plaintiffs as alleged of entitlement of right of way over the defendants' property, however, the fact that there are two approaches to the suit property itself would show that the evidence on record is properly appreciated by the Courts below. Moreover, it is also apparent from the record that there is absolutely no sufficient evidence to establish that in fact easementary right is vesting in the plaintiffs for the continuous statutory period and, therefore, it cannot be said that the Judgments of the Courts below suffer from any perversity. In this regard, reference must be made to the landmark Judgment in the case of **Kondiba Dagadu Kadam vs. Savitribai Sopan Gujar and ors.** (1999) 3 SCC 722 wherein the Apex Court has observed that the concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under section 100 of the C.P. Code. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate Court is binding on the High Court in second appeal. Adopting any other approach is not permissible. In view of this legal position, I hold that this is not a fit case which would justify interference by this Court in the Judgment of the Courts below, which are concurrent on all relevant issues, especially when no substantial question

of law is involved in the appeal.

5. In the result, the appeal is devoid of any merit and stands dismissed with no order as to costs. Interim relief, if any, stands vacated.

P.V. KAKADE, J.

ssm.